

II. REMARKS

Claims 1-21 are pending in the subject application and stand objected to or rejected by the Office in the outstanding Final Office Action. Claims 7 to 18 and 21 have been withdrawn from examination as a result of a requirement for restriction. By this Amendment and Response, claims 1 to 4 and have been amended. Amended claims 1 to 6, 19 and 20, are presently under examination.

These amendments are made without prejudice or disclaimer and are not intended to be a dedication to the public of the subject matter of the claims or their equivalents, as filed or as amended. Applicant reserves the right to pursue the claims as originally filed and amended in a later filed continuation application. No new matter has been added.

Support for the amendments to the claims can be found in the specification as originally filed. Support for the amendment to claim 1 is found in paragraph [066] of the Specification. Claims 2 and 3 were amended to remove dependency on a rejected base claim. The amendment to Claim 4 is found in paragraph [006]. An issue of new matter is not raised by these amendments and entry thereof is respectfully requested.

In view of the preceding amendments and remarks that follow, reconsideration and withdrawal of the rejections of the claims are respectfully requested.

35 U.S.C. § 102

Claims 1, 4-6, 19, and 20 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by US Pat. No. 6,294,526 (US '526) in light of US Pat. No. 5,070,018 (US '018) as evidence of qualities inherent in (US '526).

The Office alleged that US '526 teaches isolating luteolin from *Scutellaria barbata* by extracting the plant in a solvent, filtering the solvent, and extracting the filtrate to obtain luteolin (see paragraph spanning columns 3 and 4). The Office stated that while US '526 does not mention what the optical absorbance of luteolin is; US '018 shows that the absorbance of luteolin is 349 nm in methanol (see Table I), and therefore, US '526 teaches isolating a fraction from *S. barbata* that has an optical absorbance between 200 and 500 nm.

In response to the rejection, claim 1 has been amended to more specifically recite that the active fraction has an optical absorbance between about 260 nm and 330 nm. In view of this Amendment, reconsideration and withdrawal of the rejections of the claims under 35 U.S.C. § 102, is respectfully requested.

Objection to Claims

Claims 2 and 3 were objected to for being dependent on a rejected base claim (claim 1) but were noted by the Office to be allowable if rewritten in independent form. Claims 2 and 3 have been amended as suggested by the Office, thereby removing the grounds for objection. Allowance of the claims is respectfully requested.

III. CONCLUSION

If the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-2518**, referencing billing number **AN 7009682001**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account. Should a telephone advance prosecution of the subject application, the Examiner is invited to contact the undersigned at (650) 849-4950.

DATE: February 26 2004

Respectfully submitted,

By:


Antoinette F. Konski

Registration No.: 34,202

Bingham McCutchen LLP
Formerly McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111
Telephone: (650) 849-4950
Telefax: (650) 849-4800